IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.450 OF 2006

VEEKAY DISTILLERIES PVT.LTD. .. Petitioner

Versus

The Collector, Ahmednagar & Ors... Respondents

Mrs.Veena B. Thadhani for petitioner

Mr.A.H.Palekar, A.G.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd February 2006.

P.C.

. Heard Mrs.Thadani for petitioner and Mr.Palekar, A.G.P. for respondents.

2. Rule. By consent, rule made returnable forthwith. Respondents waive service.

3. Petitioner is aggrieved by the demand notice dated 3rd January 2005 and orders passed by respondent Nos. 2 and 3 respectively on 29th December 2004 and 28th June 2005.

4. The grievance of petitioner is that when it had moved Commissioner of State Excise, Maharashtra State against the order of Collector, Ahmednagar dated 29th Decermber 2004, it was incumbent upon him to have decided the matter after hearing the petitioner as well as respondent No.1.

5. The said order could not have been confirmed by the Minister, State Excise, which has been done by the impugned order dated 29th November 2005.

6. After perusing the order of the Commissioner as well as Minister, grievance of Mrs.Thadhani appears to be justified. After the petitioner had deposited the amount which is equivalent to 30% of the demand raised, the Commissioner should have heard the matter on merits and in accordance with law. While doing so, he could not have proceeded in the absence of appellant/ petitioner. It is apparent that while passing order dated 28th June 2005 the Commissioner has not heard petitioner.

7. In the light of the above, the order passed by Commissioner on 28th June 2005 is set aside. The order passed by the Minister is also required to be set aside as it confirms ex parte order passed by Commissioner.

8. Appeal preferred by the petitioner shall stand restored to file of Commissioner, State Excise for being dealt with on merits and in

accordance with law. Commissioner to decide the matter within a period of six weeks from the date of appearance of petitioner. Order of Commissioner dated 12th June 2005 staying implementation and execution of the order of Collector, Ahmednagar dated 29th December 2004 to continue till the appeal is decided and disposed of and for a period of one week thereafter. All contentions on merits are expressly kept open. Rule is made absolute accordingly. No costs.

(S.C.DHARMADHIKARI, J)